



RICHMOND POLICE DEPARTMENT GENERAL ORDER



Subject: <i>DUTIES TO THE COMMONWEALTH'S ATTORNEY'S OFFICE</i>		Chapter 1	Number 12	# Pages 5
References: CALEA: <i>42.1.5c, 42.1.6</i>	Related Orders: General Order 7-2 General Order 6-12	Effective Date: 06/21/2023 Revised By: Review Prv. Rev. Date: 11/18/2020		
Chief of Police: <div style="text-align: center; font-family: cursive; font-size: 1.2em; margin-top: 20px;"><i>Robert M. Edwards</i></div>				

I. PURPOSE

This directive outlines the responsibilities of members of the Richmond Police Department ***to disclose potentially exculpatory or impeachment evidence to the Commonwealth's Attorneys and the expected etiquette*** while conducting official business with the Commonwealth's Attorney's Office.

II. SUMMARY OF CHANGE

This General Order has been updated to define the duty that the Richmond Police Department and its sworn and civilian employees have to disclose exculpatory and impeachment evidence to the Commonwealth's Attorney's Office. This duty to disclose applies not only to exculpatory and impeachment evidence discovered during the investigation of a crime but also extends to information that may be discovered post-trial. The Richmond Police Department also has to disclose exculpatory and impeachment information known about the officers, detectives, and other RPD employees involved in the investigation of crime.

III. POLICY

It is the policy of the Department to establish the proper guidelines regarding the use of the Commonwealth's Attorney's Office and communications/dissemination of information between the Richmond Police Department and that office, ***including the disclosure of exculpatory and impeachment evidence***. The Richmond Police Department and the Commonwealth's Attorney's Office embrace the concept and practice of Community Prosecution. As such, the Commonwealth's Attorney assigns prosecutors to each police precinct to collaborate with police personnel. The Commonwealth's Attorney's Office has an open-door policy for officers, detectives, and other employees of the Police Department. The Commonwealth's Attorney seeks the complete involvement of police officers and detectives in prosecuting all criminal matters.

III. ACCOUNTABILITY STATEMENT

All employees are expected to fully comply with the guidelines and timelines outlined in this general order. Failure to comply will result in appropriate corrective action. Responsibility rests with the Division Commander to ensure that any policy violations are investigated, and appropriate training, counseling, and/or disciplinary action is initiated.

This directive is for internal use only and does not enlarge an employee's civil liability in any way. It should not be construed as creating a higher standard of safety or case in an evidentiary sense concerning third-party claims. Violation of this directive, if proven, can only form the basis of a complaint by this Department and then only in a non-judicial administrative setting

IV. PROCEDURE

A. Assignment of Commonwealth's Attorneys:

1. The Commonwealth's Attorney's Office is available as a resource for all police officers and detectives on matters of law that affect investigations, searches/seizures, and arrests. Officers and detectives are encouraged to contact the Commonwealth's Attorney's Office, in any case, the officer/detective believes such contact is warranted.
2. The Commonwealth's Attorney's Office assigns prosecutors to each of the Department's twelve (12) sectors. Questions specific to a sector should be addressed to the respective sector prosecutor. Other general questions should be addressed to the duty attorney, who can be reached during business hours at 646-3500.

B. Legal Opinions:

1. Should an employee require a formal written legal opinion from the Office of the Commonwealth's Attorney, the employee shall direct the request for such opinion, in writing, through channels to the Police Department's Office of General Counsel.
2. The Office of General Counsel will receive an opinion from the Office of the Commonwealth's Attorney and respond to the employee requesting the opinion.

C. Communication and Dissemination of Information:

The Commonwealth's Attorney's Office will routinely communicate with employees of the Police Department and disseminate information to Department personnel both verbally and in writing. This includes assistance in active cases, training, and communication for other purposes. When the issue is Department-wide, the Commonwealth's Attorney's Office will communicate with and/or disseminate the relevant information to the Office of General Counsel for further dissemination.

Department personnel, likewise, will disseminate information to the Commonwealth's Attorney's Office, including but not limited to disclosure of exculpatory and impeachment evidence discovered during the investigation of a crime and previously unknown or unrecognized exculpatory evidence discovered post-conviction.

[CALEA 42.1.6]

1. ***Duty to Disclose Exculpatory & Impeachment Evidence***

In all criminal prosecutions, prosecutors are required to disclose evidence that is “favorable to an accused.” Evidence favors an accused if it tends to excuse, justify, or absolve the accused of guilt. The duty to disclose “encompasses impeachment evidence as well as exculpatory evidence.” United States v. Bagley, 473 U.S. 667, 676 (1985). In this context, Commonwealth’s Attorneys are charged with having knowledge of information known to law enforcement agencies “irrespective of the good faith or bad faith of the prosecution.” Brady v. Maryland, 373 U.S. 83 (1963). “[T]he rule encompasses evidence known only to police investigators and not to the prosecutor.” Therefore, “[i]n order to comply with Brady, ... the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in [the] case, including the police.” Bly v. Commonwealth, 280 Va. 656 (2010). Failure to disclose Brady/Giglio material could be found to be a violation of due process that may result in the dismissal or reversal of otherwise valid convictions.

2. ***Brady material and exculpatory evidence includes but is not limited to:***

- a. ***Physical evidence that may be favorable to the defense or tend to exculpate the defendant (i.e. unknown fingerprints at a crime scene, DNA evidence that identifies someone other than the defendant, varying types of shell casings found at a crime scene)***
- b. ***Conflicting witness/victim statements and reports***
- c. ***Witnesses who were not able to identify the accused***
- d. ***Known untruthfulness of a witness/victim***
- e. ***Known biases of witnesses/victims***
- f. ***Prior criminal history of witnesses/victim***
- g. ***Scientific reports favorable to the accused***

3. ***The Commonwealth’s Attorneys are subject to a continuing duty to disclose exculpatory evidence to the defense, which means that police officers/detectives are obligated to continue to disclose potentially exculpatory evidence during the investigative process, prosecution, and post-conviction.***

4. ***The duty to disclose exculpatory and impeachment evidence extends to information known about the officers, detectives, and other RPD employees (whether in a sworn or civilian law enforcement position) involved in the investigation of crime. As such in coordination with the Internal Affairs Division, the Office of General Counsel shall disclose the pendency of and ultimate findings/substantiations of misconduct amounting to Brady/Giglio information. The time frame within which disclosures regarding RPD employees must be made to the Commonwealth’s Attorney’s Office are defined in a memorandum of understanding. The misconduct subject to disclosure is also defined in the memorandum of understanding and includes but is not limited to:***

- a. Untruthfulness or conduct or statements that call into question an employee's veracity*
- b. Conduct or statements that call into question an employee's ability to perceive and recall events*
- c. Conduct or statements that reflect on an employee's bias against a particular defendant or a particular group defined by race, religion, gender, or other protected classes*
- d. Instances of excessive use of force or violations of the use of force policy*
- e. Criminal convictions or pending criminal charges*

D. General:

1. Police officers/detectives shall cooperate fully with the Commonwealth's Attorney's Office in the prosecution of all criminal matters.
2. Police officers/detectives shall contact the Commonwealth's Attorney's Office before charging any individual with homicide.
3. Police officers/detectives should contact the Commonwealth's Attorney's Office in regard to an arrest or investigation for any aggravated felony (rape, forcible sodomy, object sexual penetration, robbery, malicious wounding). Police supervisors will use the current contact list to notify the appropriate duty attorney for the crimes. *[CALEA 42.1.5c]*
4. The Commonwealth's Attorney's Office requires a completed report to be delivered (by email or otherwise) at least two weeks before the preliminary hearing on all felony charges. The report should include copies of any digital, photographic, or documented evidence. Cases without completed reports will likely require a continuance, at great inconvenience to the court and witnesses, and may result in the dismissal of the charges.

NOTE: All Case File Folders resulting from criminal arrest and direct indictments shall be hand-delivered to the Commonwealth's Attorney's Office within five (5) working days of the suspect's arrest. Refer to General Order 7-2, "Case File Preparation Procedures", for protocol related to case file folders.

5. Police officers/detectives shall utilize the Court Scheduler Application for their court dates, training, and vacation leave.
6. Any officer scheduled for mandatory training must notify the court and the Office of General Counsel at least two days before the scheduled court date. Officers issued a PD-79 with the Court Attendance section box checked "You will not attend court until otherwise notified" shall notify the Office of General Counsel of upcoming court cases.
7. The Court Conflict Dates and Witness Form (PD-67) is available to help avoid conflicts with court dates. Officers are encouraged to keep a copy of the PD-67 for their records.

V. FORMS

A. PD-67, Court Conflict Dates and Witness

B. PD-79, Change in Duty Status and/or Status of Police Powers